In the language of *Neild v. District of Columbia,* 110 F. 2d 246, 254:

> "The rule is well settled that unless the contrary plainly appears a statute operates prospectively only (*Cox v. Hart,* 260 U. S. 427, 434, 43 S. Ct. 154, 67 L. Ed. 332; *Big Diamond Mills Co. v. United States,* 8 Cir., 51 F. 2d 721, 726.) See generally, Smead, The Rule Against Retroactive Legislation· A Basic Principle of Jurisprudence, 20 Minn. L. Rev. 775, 778 *et seq.*) ; in other words, 'that a statute ought not to be construed to operate retrospectively in the absence of clear, strong, and imperative language commanding it' (*Home Indemnity Co. v. Missouri,* 8 Cir., 78 F. 2d 391, 394. See also, *United States v. Heth,* 3 Cranch, U. S. 399, 413, 2 L. Ed. 479; *Union Pacific Co. v. Laramie Stock Yards Co.,* 231 U. S. 190, 34 S. Ct. 101, 58 L. Ed. 179; *Jones v. Fidelity & Columbia Trust Co.,* 6 Cir., 73 F. 2d 446) ; and if a double sense is possible that which rejects retroactive operation must be selected. (*Shwab v. Doyle,* 258 U. S. 529, 535, 42 S. Ct. 391, 66 L. Ed. 747, 26 A. L. R. 1454.)"

Furthermore, even if Section 303 were given a retroactive effect, it would avail Petitioners nothing since threats of economic reprisals by way of strike or otherwise by a labor organization to an employer group do not constitute a violation of said section. (*Humphrey v. Teamsters' Union* (D. C. N. Y.), 25 LRRM 2318; *In re Electrical Workers,* 82 NLRB No. 132; *In re Teamsters' Union,* 87 NLRB No. 130; *In re Spokane Building and Trades Council,* 89 NLRB No. 141.)

(7) The Gravamen of Petitioner's First Cause of Action Is That the Employer Respondent in Conspiracy With Labor Respondent Committed Unfair Labor Practices.

The burden of Petitioner's Complaint, as set forth in its First Cause of Action, is that the Employer Respondents in conspiracy with Labor Respondents committed unfair labor practices against Petitioner and its members as follows:

(a) Petitioner's members were discharged at a time when Petitioner had a closed-shop contract with the Employer Respondents covering the employment of its members, because such members were affiliated with Petitioner and were not either members of Labor Respondent The International Alliance, etc., or permittees of it;

(b) Petitioner's members were "locked out" because of their affiliation with Petitioner at a time when it is alleged a valid contract for their employment existed, without such contract having been terminated as provided by law; and

(c) Employer Respondents have refused to bargain with Petitioner as the bargaining agent of its members.

It is alleged in the First Cause of Action (1) that Petitioner, as the bargaining representative of its members, negotiated and entered into certain collectively bargained contracts—to which contracts Labor Respondents were, of course, not parties—and that said contracts have never been terminated; (2) that the "employer defendants with the intent and purpose of depriving plaintiff's members of the employment, and benefits of said collectively bargained agreements, and of their work tasks pursuant to their terms, by means of an unlawful confederation, each with

the other, during or about March, 1945, agreed between themselves, and with the defendant IATSE, that they would take all carpentry work tasks in all of their respective studios from plaintiff's members and transfer the same to members or permittees of defendant IATSE" [Par. XI, Amended Complaint, R. 44-45]; (3) that on or about August 22, 1946, Labor Respondent The Alliance made certain threats and demands "to coerce the employer defendants, and require them to so replace all of plaintiff's members with IATSE members and permittees in carpentry work," and that the Employer Respondents agreed "to deprive all of plaintiff's members of all carpentry work tasks in all of said studios, and to replace them exclusively with members or permittees of defendant IATSE" [Pars. XIV and XV, Amended Complaint, R. 46-47]; (4) that "on or about September 23, 1946, in pursuance of said conspiracy, said employer defendants uniformly ordered all of plaintiff's members then at work to discontinue their work tasks, and immediately leave and depart from said studios and premises of the employer defendants, in a *mass lockout* of all of plaintiff's members"; (5) that all of Petitioner's members were *locked out* and the Employer Respondents employed members of Labor Respondents The International Alliance, etc., and its permittees, exclusively, in all carpentry work tasks in the studios and maintained "a blacklist against plaintiff's members from that date to this"; (6) that "ever since said *mass lockout* on or about September 23, 1946, employer defendants, and their said Association, *have refused to bargain with plaintiff as the bargaining agent of its members*"; and (7) that "by the aforesaid unlawful acts and doings, defendants *have caused plaintiff's* MEMBERS *to be deprived of their work tasks,* and eligibility for the same,

under said contracts down to the present time" [Pars. XVI, XVII, XVIII, and XIX, Amended Complaint, R. 47-48].

The above allegations, constituting as they do the gravamen of Petitioner's First Cause of Action, set forth unfair labor practices under both the National Labor Relations Act (Wagner Act) and Labor-Management Relations Act, 1947 (Taft-Hartley Act), as follows:

(1) Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of both Acts, which said Section 7 guarantees to employees the right of self-organization, to join or assist labor organizations, and to engage in other concerted activities for the purpose of collective bargaining (Sec. 8(a)(1), Wagner Act, *id.*, Taft-Hartley Act);

(2) "Discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization" (Sec. 8(a)(3), Wagner Act, *id.*, Taft-Hartley Act); and

(3) Refusal to bargain collectively with Petitioner as the representative of its members, alleged employees of Employer Respondents (Sec. 8(a)(5) Wagner Act, *id.*, Taft-Hartley Act).

Petitioner on several occasions in the First Cause of Action, in conclusory fashion, refers to the conduct of the Respondents—which we have immediately hereinbefore

epitomized—as violations of contracts to which the Employer Respondents are alleged to be members. We submit, however, that such conduct constitutes unfair labor practices, and in this respect Petitioner is in the same position as was the labor organization, plaintiff in *United Packing House Workers, etc. v. Wilson and Co.*, 80 Fed. Supp. 563. That was an action brought, as the decision states, "under the provisions of Section 301(a) and Section 301(b) of the Labor-Management Relations Act, 1947." Plaintiff alleged in the complaint therein the existence of a collective bargaining agreement with the defendant and set forth a series of alleged violations of such contract, consisting of a failure and refusal to engage in collective bargaining, a failure to pay sick benefits, a failure to grant striking employees vacations with pay, a failure to abide by seniority provisions, a failure to adjust grievances, and a failure to deduct and pay over dues to the union. The court said, at page 566 of 80 Fed. Supp., after pointing out that it was clear from the complaint that all the things complained of by the plaintiff arose out of a labor dispute, as follows:

> "The gravamen of the complaint is that defendant committed unfair labor practices."

And stated further on page 569, as follows:

> "Plaintiffs, by their amended complaint, attempt to characterize the unfair labor practices complained of as 'contract violations' and thereby circumvent the plain mandate of Congress that jurisdiction of such matters be vested exclusively in the National Labor

Relations Board and that Federal trial courts are without jurisdiction to redress by injunction or otherwise unfair labor practices."

Since, as clearly appears, the alleged acts of the Employer Respondents, as alleged in the First Cause of Action, constitute unfair labor practices, despite Petitioner's characterization of same as "contract violations," we are now brought to a consideration of the question of whether the District Court had any jurisdiction whatsoever over the subject matter of said First Cause of Action, even if it should be held that the numerous other objections hereinbefore urged by us to such jurisdiction are without merit.

(8) District Courts Have No Jurisdiction to Grant Relief in Any Form for Violations of the Wagner Act or the Taft-Hartley Act Constituting Unfair Labor Practices; Jurisdiction With Respect to Such Matters Is Vested Exclusively in the National Labor Relations Board.

In the *Amazon Cotton Mill Co.* case (167 F. 2d 183), the plaintiff labor union instituted an action alleging that the defendant employer with which it had a collectively bargained contract had violated such contract by refusing and failing to bargain collectively with the plaintiff, had refused to recognize plaintiff as bargaining agent, had interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization, to form, join, or assist a labor organization, etc., and sought damages in the sum of $500,000.00 to be awarded plaintiff and

those employees of the defendant therein whom plaintiff represented (76 Fed. Supp. 159-160). The lower court denied a motion to dismiss, which motion was made upon the ground that the National Labor Relations Board had exclusive jurisdiction. The lower court, however, held that it had jurisdiction under Section 301(b) of the Taft-Hartley Act. On appeal to the United States Court of Appeals for the Fourth Circuit, Judge Parker, speaking for that court, reversed the lower court.

We quote from Judge Parker's decision as follows:

> "We think it clear that the District Court had no jurisdiction of the case. Unless the Labor Management Relations Act of 1947, 29 U. S. C. A., Sec. 141 *et seq.*, has had the effect of clothing each of the more than two hundred District Judges of the country with the powers over unfair labor practices vested in the National Labor Relations Board, . . . We do not think that the Labor Management Relations Act was intended to have or does have that effect." (Pp. 185-186.)
>
> ". . . The jurisdiction of the courts over labor disputes was still further limited by the National Labor Relations Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. A., Section 151 *et seq.*, which guaranteed the right of collective bargaining to employees engaged in industry affecting interstate commerce, defined unfair labor practices on the part of employers and set up the National Labor Relations Board to supervise collective bargaining and protect employees in the exercise of rights guaranteed by the Act from

unfair labor practices on the part of their employers. It is perfectly clear, both from the history of the National Labor Relations Act and from the decisions rendered thereunder, that the purpose of that act was 'to establish a single paramount administrative or quasi-judicial authority in connection with the development of federal American law regarding collective bargaining'; that the only rights made enforceable by the act were those determined by the National Labor Relations Board to exist under the facts of each case; and that the federal trial courts were without jurisdiction to redress by injunction *or otherwise* the unfair labor practices which it defined. (Citing cases.)" (P. 186.)

The most important statement made by Judge Parker, so far as the present point under discussion is concerned, is contained in the last paragraph of his opinion, which reads as follows:

"For the same reason that plaintiff may not maintain the suit for injunction to restrain the *unfair labor practice, it may not maintain the action to recover damages on account thereof. Recompense of lost wages on account of an unfair labor practice is a matter for the Labor Board.* See Phelps Dodge Corp. v. N. L. R. B., 313 U. S. 177, 194, 61 S. Ct. 845, 85 L. Ed. 1271, 133 A. L. R. 1217; International Union etc. v. Eagle Picher Co., 325 U. S. 325, 340, 65 S. Ct. 1166, 89 L. Ed. 1649; Wallace Corp. v. N. L. R. B., 4 Cir., 159 F. 2d 952." (Pp. 190-191.)

There is a bead-roll of authorities sustaining the rule that the exclusive power to grant relief, either by way of recompense for lost wages or otherwise, resulting from unfair labor practices, is vested in the National Labor Relations Board and in the District Courts of the United States. Among such cases are *Phelps Dodge Corp. v. National Labor Rel. Bd.*, 313 U. S. 177, 85 L. Ed. 1271, and *International Union v. Eagle Picher, etc.*, 325 U. S. 335, 85 L. Ed. 1649. The latest word on this subject comes from the United States Court of Appeals for the Ninth Circuit when, in *California Association of Employers, etc. v. Building and Constructions Trades Council of Reno, etc., et al.*, 178 F. 2d 175, it stated:

> "The Labor Management Relations Act, 61 Stat. 136, made numerous changes in the Administration of the Act it amended, but these changes do not affect the results herein. See: *Amazon Cotton Mill Co. v. Textile Workers Union,* 4 Cir., 167 F. (2d) 183; *Amalgamated Association, etc., v. Dixie Motor Coach Corp.*, 8 Cir., 170 F. (2d) 902; *Bakery Drivers Union v. Wagshal,* 333 U. S. 437. These cases dealt directly with injunctions, but the analyses made and the reasons advanced control here. None of the changes gave private litigants additional rights to invoke the direct aid of the District Courts to prevent unfair labor practices. *The Board retains its exclusive primary jurisdiction* (except as to authorized cessions to qualified state agencies, 29 U. S. C. A., Section 160(a), as amended) *over the administration of the Act where the defined unfair labor practices are at issue.*"

II.

Second Cause of Action of Amended Complaint Fails to State a Claim Upon Which Relief in Favor of Petitioner Can Be Granted; District Court Lacked Jurisdiction Over the Subject Matter of Said Cause of Action.

Since diversity of citizenship is not alleged and its absence affirmatively appears, the District Court had no jurisdiction of the Second Cause of Action under the Federal statute which vests jurisdiction in District Courts where the requisite amount in controversy and diversity of citizenship exists. It is Petitioner's contention, as set forth in Paragraph I of the Second Cause of Action [R. 49], that the District Court had jurisdiction over the subject matter of said Second Cause of Action under the Fifth and Fourteenth Amendments to the Constitution, the Civil Rights Act, the Social Security Act, the National Labor Relations Act, and the Labor-Management Relations Act, 1947. In other words, Petitioner insists that by the Second Cause of Action it is asserting the violation of a right guaranteed by or arising out of the Constitution or laws of the United States. The *First Schatte Case* has unequivocally disposed of such contentions of Petitioner adversely to it.

Petitioner asserts that Section 301(a), LMRA, gives aggrieved employees a right of action for the violations of collectively bargained contracts to which, as Petitioner says, they have become parties, and in support of such assertion cites and quotes from *Gattliff Coal Co. v. Cox,* 142 F. 2d 876. The cited case in no manner supports Petitioner's contention even if such contention were germane to the question now before this court. It did not

arise under the National Labor Relations Act; it was an action brought to recover overtime compensation under the Fair Labor Standards Act. Diversity of citizenship existed. Neither Section 301 nor any other section of the National Labor Relations Act is referred to in the opinion. Plaintiff in that action sought to recover overtime compensation for services rendered during a period of time in which he was actually employed, and in order to determine the rate of compensation to which he was entitled it was necessary to make reference to a collectively bargained contract that had been entered into between the employer and the labor organization of which plaintiff was a member. Plaintiff was suing under the Fair Labor Standards Act to recover an amount alleged to be due him pursuant to that law and at a rate of pay for services actually performed, set forth in the collectively bargained agreement. Obviously, there is no similarity between the *Gatliff Coal Co.* case, in which plaintiff sued on his own behalf as an employee to recover compensation due him by operation of the express terms of the Fair Labor Standards Act and the terms of a contract, and the instant action, wherein Petitioner is a labor organization seeking to recover damages alleged to have been sustained by its members after they ceased to work, based on an alleged breach of contract—not a contract of hiring with the employee members, but a collectively bargained closed-shop contract.

Petitioner advances the argument that Petitioner's *members* are entitled to relief for a violation of the collectively bargained contracts relied upon in this action and cites the case of *Yazoo & M. V. R. Co. v. Webb,* 64 F. 2d 902. This case, like the *Gatliff Coal Co.* case,

in no way concerns the issue now before this court, namely, whether District Courts of the United States, in actions such as the instant one, have jurisdiction. Although it does not appear from the opinion, it is a fact, as we ascertained by procuring a copy of the pleadings, that diversity of citizenship existed in the *Yazoo* case, and, as in the *Gatliff Coal Co.* case, the plaintiff in the *Yazoo* case was suing for compensation for services actually performed under a contract of hiring and it was necessary to refer to a collectively bargained contract in order to determine his rate of compensation and the classification in which he properly belonged.

Conclusion.

Respondents The International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada and Roy M. Brewer respectfully pray that the petition for a writ of certiorari be denied.

Respectfully submitted,

HENRY G. BODKIN,
GEORGE M. BRESLIN,
MICHAEL G. LUDDY,

Attorneys for Labor Respondents The International Alliance, etc., and Roy M. Brewer.

APPENDIX "A."

The following is a portion of the Reporters' Transcript of Proceedings at the time the motions to dismiss were argued:

"Now, in connection with your amended complaint in the studio union, wherein does this differ, Mr. Cobb, from the complaint which was previously filed and on which I ruled in accordance with the memorandum filed on May 27th?

Mr. Cobb: The complaint in this case is an action by the Local union as representative of its members, under the jurisdiction of Section 301 of the Taft-Hartley Act, and for damages.

* * * * * * * * *

The Court: You are seeking only damages?

Mr. Cobb: Seeking damages for and on behalf of the members; a suit by the union as representative of its members.

The Court: Under 301 of the Taft-Hartley Act?

Mr. Cobb: That is correct.

The Court: And not under the antitrust laws?

Mr. Cobb: There is a second count there. That is under the Constitution." [R. 99-100.]

* * * * * * * * *

Mr. Cobb: * * * We are not quibbling on the proposition. This case stands on what is due the members. We are not after what dues the local lost by it.

The Court: In other words, there is no effort on the plaintiff's part here to assert any damages to the union as an entity distinct and separate from the membership?

Mr. Cobb: That is correct.

The Court: I don't think Section 301 grants that jurisdiction in this court; and the motion to dismiss the complaint in 8864 will be granted. [R. 104.]

The Court: Well, I read this through; I can't see it. I am prepared now to rule that the complaint does not state a claim for relief under the Social Security Act, the Civil Rights Act, the Fourteenth Amendment or the Fifth Amendment.

Now, that leaves for consideration the question as to whether or not the Taft-Hartley Act, Section 301, construed in connection with Sections 1331, 1337 and 1343 of the Judicial Code, grants relief or grants this court jurisdiction.

Mr. Cobb: Now the first cause of action that is alleged is under the jurisdiction of Section 301 of the Taft-Hartley Act.

The Court: What are the damages here? I read the complaint through.

Mr. Cobb: The damages are damages suffered by the individual members in being deprived of work tasks, and the same as to all members of the local employed by all the defendants, as alleged.

The Court: What is your authority that the union can file a suit for damages to its members rather than the union as an entity?

Mr. Cobb: What?

The Court: What is your authority for the proposition that under Section 301 the union can file a suit for damages on behalf of each individual member, rather than a

suit on behalf of the union itself for injury to the union as an entity distinguished from its members?

Mr. Cobb: Section 301, paragraph (b), the second sentence. Has your Honor that before you?

The Court: Yes. 'Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States.'

Mr. Cobb: 'And in behalf of employees.'

The Court: 'In behalf of the employees' is the one that confers jurisdiction, if anything does.

Mr. Cobb: That is the jurisdiction.

The Court: What have you got to say about it? Has that been construed by any cases?

Mr. Cobb: I don't think so." [R. 101-102.]

AUG 23 1950
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1950.
No. 223.

STUDIO CARPENTERS LOCAL UNION No. 946, an unincorporated labor organization, as representative of its members,

Petitioner,

vs.

LOEW'S, INCORPORATED, a corporation, *et al.*,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari on Behalf of Respondents Association of Motion Picture Producers, Inc., Loew's, Incorporated, Paramount Pictures, Inc., Warner Bros. Pictures, Inc., Columbia Pictures Corporation, Samuel Goldwyn Productions, Inc., Republic Productions, Inc., Hal E. Roach Studio, Inc., Twentieth Century-Fox Film Corporation, R. K. O. Radio Pictures, Inc., and Universal Pictures Company, Inc.

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Additional Statement of Facts.

This action was originally filed as one for declaratory relief [R. p. 2] by petitioner (an A. F. of L. local union) as the nominal plaintiff against the International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada (another A. F.

of L. union) and a group of motion picture producers and their trade association. The International Alliance will be hereinafter referred to as the IATSE, and the producers as the Employer Defendants. The complaint was dismissed with leave to amend (84 Fed. Supp. 675). Petitioner then filed its "Amended Complaint for Damages" [R. p. 40] in which all references to declaratory relief were eliminated. Motions to dismiss this complaint for lack of jurisdiction and failure to state a claim were filed by Employer Defendants and the IATSE, and the District Court ordered the complaint dismissed with leave to amend [R. p. 90]. Petitioner formerly elected not to make any further amendments [R. p. 91], whereupon a judgment of dismissal was entered without opinion [R. p. 92]. Petitioner appealed to the Court of Appeals for the Ninth Circuit and the decision of the District Court was affirmed (180 F. 2d 168).

This is a companion case to that of *Schatte v. International Alliance* (182 F. 2d 158) and *MacKay v. Loew's Inc.* (182 F. 2d 17), in both of which cases Petitions for Certiorari have been filed and in each of which Employer Defendants are contemporaneously filing Briefs in Opposition. All three cases involve the same jurisdictional dispute and the same events occurring in the course thereof. Except for the fact that this case is brought by petitioner labor organization as nominal plaintiff, the complaint here is practically a repetition in somewhat different language of the allegations in the current *Schatte* case, omitting from this complaint allegations with respect to

the filing of unfair practices before the National Labor Relations Board, and allegations with respect to the claimed violation of the anti-trust laws. The Court of Appeals treated the *Schatte* opinion as decisive of all points here involved, and we think there can be no question but that it is so decisive. Rather, therefore, than repeat in lengthy form the arguments which we made in our Brief in Opposition to the Petition for Certiorari in the current *Schatte* case, we respectfully refer the Court to that Brief and will not burden it with a detailed repetition of the argument there presented.

We desire that it be especially noted that the petitioner in this case is *not* suing for any wrongs done to it or for any damage suffered by it. Both alleged causes of action purport to be for wrong done to and damages suffered *by the members* of petitioner labor organization. As a matter of fact, petitioner's counsel expressly refused in the District Court to amend the complaint to allege any wrong to or damage suffered by the Union [R. pp. 101-102, 104-105]. The case is thus identical in principle with the current *Schatte* case, except that here *the union* purports to act as representative to recover damages for its members because of their individual alleged injuries, whereas there a group of individuals purported to act as such representatives for the same purpose.

ARGUMENT.

As we pointed out in our Brief in the current *Schatte* case, the petition there presents no important or novel points at all, and the points that it does present were correctly decided by the Court of Appeals. The petition here concededly presents no point in addition to that determined in *Schatte*, although there are, by reason of the difference in the nominal plaintiff in this case, several reasons in addition to those expressed by the Court of Appeals why the complaint here fails to state any cause of action within the jurisdiction of the Federal court. We shall briefly review the petition here in the light of the complaint and the decision of the Court of Appeals to demonstrate its lack of merit.

I.

The First Cause of Action Does Not State a Claim for Relief Within the Jurisdiction of the Federal Court.

A. Section 301 of the LMRA Does Not Give the Federal Court Jurisdiction.

Petitioner did not allege here, as did the petitioners in the current *Schatte* case, that the Carpenters were discharged on September 23, 1946. Nevertheless, the complaint alleges that on that date petitioner's members were laid off and thereafter replaced by members of the IATSE, who were granted a closed-shop by the Employer Defendants [R. pp. 47-8]. If there were any employment agreements to be breached (which we deny), that was, of course, a complete breach of such employment agreement giving rise to an immediate and indivisible cause of action as held in the *Schatte* case. In fact, the cases of *Baron*

v. Kurn (Mo., 1942), 164 S. W. 2d 310, and *Barry v. Detroit Terminal Company* (Mich., 1943), 11 N. W. 2d 867, both involved situations of a layoff and replacement, in violation of contracts guaranteeing the individual employment or re-employment, and in both cases the court held that a single cause of action arose not later than the time of replacement. As we pointed out in our *Schatte* Brief, and as the Court of Appeals held, the LMRA provision granting a substantive right in the enforcement of labor contracts, which did not come into effect until June, 1947, cannot apply to a breach occurring in September, 1946.

There is another reason which the Court of Appeals found it unnecessary to discuss, but which is equally destructive of petitioner's claim to recover under Section 301. That is the fact that the labor organization is not suing here by reason of any damages suffered by it because of the breach of any labor contract, but solely for the purpose of enforcing claimed rights to damages *on the part of individual members.* We submit that Section 301, which opens the Federal courts to contract actions by and against employers and labor organizations, requires that the right to be vindicated in such action be a right possessed by such employer or such labor organization and not one asserted wholly in the interests of private individuals.

It is well settled that the union has no power or right, simply because it is a labor organization, to enforce the individual and private rights of its members or of employees which it represents against their employer on causes of action arising out of such employment for damages sustained by such individual employees. This is true though the acts of the employer constitute a breach of the

agreement for which the union also might itself secure the remedy to which its particular injuries entitles it.

In *Christiansen v. Local No. 680* (N. J., 1940), 10 A. 2d 168, the union attempted to enforce the right of action on behalf of certain employees who had been discharged in a claimed violation of contract. The Court denied relief, saying:

> "While their unjustifiable discharge may give them a cause of action on the contract, *it is a cause solely between them and Tuscan and not between the members of the Union collectively and Tuscan.* No relief in this respect can be had on the counterclaim."

In *Milk Wagon Drivers Union v. Associated Milk Dealers* (D. C. Ill., 1942), 42 Fed. Supp. 584, the action was almost identical with that of petitioner here. The union there sought to recover, for the benefit of individual members, money alleged to be due each member as wages under the terms of the union-company agreement. The Court dismissed the complaint saying:

> ". . . There was no contract with an employee until he accepted the terms offered by the employer by entering into employment. Then there was a contract between the employer and the employee, *a contract which the employee, not the union, may enforce.*
>
> "This is not to say, however, that the union has no interest in the matter of the wages which were part of the subject of the contract between it and the employers. While it may not maintain a suit to recover the wages, it is interested in the proper construction of its contract with the employers. . . . In my opinion, though this question was not argued,

> the union has a sufficient interest in the contract to entitle it to maintain an action for a judgment declaring the proper construction of this provision, *but not a suit to recover the wages.*"

Joint Council Dining Car Employees v. New York Cent. R. Co. (D. C. Ill., 1946), 7 F. R. D. 376, was a case similar to the *Milk Wagon Drivers* case. The Court there concluded:

> ". . . Before any right to recover money accrued to a member of the union, it is necessary that the employee enter upon a contract of employment in accordance with the terms of the agreement between the Local and the employer. *The right to recover money results from the contract of employment between the employer and employee and only the employee can sue to recover money due him.* The union has its right in the enforcement of its bargaining agreement, but *has no interest as an organization in the money due the members of the union.*"

It thus appears clear from the reported cases that plaintiffs' action here could not have been maintained even in a state court because plaintiff is admittedly not suing here for damage to the union but is suing for damage to its members as individuals. Local 946 has not alleged that it suffered any damage from the contract violations and other acts complained of.

The passage of Section 301 of the LMRA did not give the labor organization a right to sue which did not theretofore exist under state law. Reference to the actions of Congress, contained in Appendix B of our Brief in Opposition to the Petition in the current *Schatte* case, shows that it was the intent of Congress simply to create new Federal rights to enforce existing causes of action given

by the states to labor organizations and not to throw open Federal courts to a host of suits which could not theretofore have been brought in either Federal or state courts.

It will be noted that emphasis throughout the Congressional hearings and debates was on the treatment of the labor union as an "entity" analogous to a corporation. The congressional purpose in including Section 301 in the LMRA was to provide a convenient means for enforcement against labor unions of their solemnly undertaken obligations contained in collective bargaining contracts by permitting them to be sued on such contracts in the Federal courts and by providing procedural machinery for securing jurisdiction over them. As a concomitant, employers were also liable to suits on such contracts by the unions, but no provision was made for suits by individuals nor, we submit, could it have been intended that the unions could enforce against employers *individual* rights to wages, damages for discharge, loss of vacation and other benefits, or other individual and particular injuries which, as we have already shown, the unions could not enforce prior to the passage of the Act.

Even where an act of employer affects a large number of employees, as petitioner here claims, the individual effect as to each particular employee and the facts upon which recovery, if any, and the amount thereof, is predicated will vary in each individual case. For the same reason that the Court in the *Milk Wagon Drivers Union* case, *supra,* would not undertake to determine the separate rights of 3500 individual milk drivers in a suit by the union, so it is not to be expected that Congress intended to place upon the Federal courts the burden in this case of determining the separate rights of 2000 individual carpenters merely because the action is one brought by a labor organization.

Petitioner relies on the language of Section 301 (b) stating that "any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States" (Ptn. p. 9). It is well settled that this language is merely intended to make clear the capacity of labor unions to sue or be sued and in no way enlarges the class of cases in which the District Court is given jurisdiction. The only enlargement is that contained in Section 301(a) and Section 303.

Amazon Cotton Mills Co. v. Textile Workers Union (4th Cir., 1948), 160 F. 2d 183;

United Packing House Workers v. Wilson & Co. (D. C. Ill., 1948), 80 Fed. Supp. 563.

The LMRA gives to the union the right to sue for the breach of the collective bargaining agreement. The collective bargaining agreement, as today interpreted, creates mutual rights and obligations binding on both the union and the employer as entities. These rights are the subject matters of protection in the Federal courts. In this very case, if the union's claimed right to a closed shop existed and had been violated by the employers after the passage of LMRA, the union might sue to vindicate that right in a Federal court and collect such damages as *the union* has suffered thereby. Here, however, the union advisedly refuses to sue to vindicate *its* rights. It alleges no damage to it nor any effect upon it. Instead, the union comes in as a collection agency for various individuals whom it alleges have been denied an asserted right to continued employment. Such rights as the individuals might have would arise out of the *fact* of such employment and the individuals' self-determined desires, if they exist, to continue therein. It is true that the *terms* of that employment may have been regulated by the collective bargaining

agreement, but the *fact* of an employer's liability depends, not upon an agreement on the part of the union, but on the individual determination of a particular person to accept a job. The extent of that liability will vary with every individual and every employer.

For the adidtional reason, therefore, that Section 301 permits suit by labor organizations only to vindicate rights possessed by them and does not constitute the union a trustee for individual obligations owing to employees, the complaint states no cause of action within the jurisdiction of the District Court.

Most of the petitioner's cases have already been distinguished in our brief in the current *Schatte* case. The petitioner refers, however (Ptn. p. 9-11), to a few additional cases which petitioner claims establish its right to sue under Section 301. This they do not do. *Yazoo v. M. V. R. Co. v. Webb* (5th Cir., 1933), 64 F. 2d 902, was a diversity action for wages in which the Court held that the rights of the employee in question arose from his contract of employment with the employer and *not* from the collective bargaining agreement. The two *Gatliff* cases (6th Cir., 1944-45), 142 F. 2d 876, 152 F. 2d 52, were actions under the Fair Labor Standards Act and have nothing in them bearing on this case. *Wilson & Co., Inc. v. United Packing House Workers* (S. D. N. Y., 1949), Fed. Supp. 162, was an action by an employer against the union for damages for a strike. *United Steel Workers v. Shakespeare* (D. C. Mich., 1949), 84 Fed. Supp. 267, was an action primarily for declaratory relief because of the termination by the employer of a union contract. Damages were also asked. All that the Court held was that a claim was properly stated, which, of course, was correct since the union had the right to sue under Section 301 for

termination of its contract. *A. F. of L. v. Western Union Telegraph Co.* (6th Cir., 1950), 179 F. 2d 535, was a case for declaratory relief and injunction brought by the union to interpret pension plan provisions in a contract. *Electrical Workers v. Baldwin* (D. C. Conn. 1946, 67 Fed. Supp. 235) was an action for an injunction against interference with picketing and had nothing to do with Section 301.

B. Section 303 of the NLRA Does Not Give the Federal Court Jurisdiction in This Action.

This is the identical point made by the petitioners in the current *Schatte* case, which was correctly determined by the Court of Appeals in the opinion in that case as well as its opinion in this case, and which is covered in our brief in the current *Schatte* case to which we respectfully refer this Court. The allegations here are even more clear than in the *Schatte* case that the only threat made to anybody by the IATSE was made to the Employer Defendants [R. pp. 46, 47]. Such a threat is not a violation of Section 303. Furthermore, the threat was made in August, 1946, and Section 303 was not enacted until June, 1947, so that under no circumstances could jurisdiction be maintained under this section of the LMRA.

There is another and further reason why the complaint here does not allege any right under Section 303. Section 303(b) permits suits only by "whoever shall be injured in his business or property." We have already pointed out that the complaint here has alleged no injury whatever to the property or business *of the petitioner.* The only injury purported to be alleged is *to the employees* who are not parties. Consequently, under the plain language of the statute the complaint does not state a claim under Section 303(a).

C. The Alleged Failure of the Employer Defendants to Bargain Collectively With the Union Does Not Give Jurisdiction to the Federal Courts.

Again, this point is identical to that contained in the current *Schatte* complaint and it is answered completely by the Court of Appeals and by our Brief in Opposition to the Petition in that case. Failure to bargain is specifically made an unfair labor practice by both the NLRA and the LMRA. It is established by an unbroken line of authority, including the decision of this Court in *Amalgamated Utility Workers v. Consolidated Edison Co.* (1940), 309 U. S. 261, that the power of the Labor Board over unfair labor practices is exclusive and that no Federal court has power or authority to grant remedies for such unfair labor practices in an independent action.

II.

No Claim Within the Jurisdiction of the Federal Court Is Alleged in the Second Cause of Action.

The second cause of action relating to the filing of claims for unemployment benefits before the California Employment Commission is, while somewhat more detailed, in essence exactly the same as that alleged in the current *Schatte* case. In spite of the additional detail, it is important to note the allegations which are *not* included in this cause of action. While it is alleged that the defendant companies acted in conspiracy, there is no allegation that the state officers, or any of them, had any part in such conspiracy. The allegation is merely that the defendants, by their false representations, "thereby induced" and "caused" the state agency and its officers to do or refrain from doing certain acts. The state officers are not made parties to the action. It should also

be noted that there is no allegation that the plaintiff, or any of its members, pursued any remedy in the courts of California, although the existence of such a remedy for any errors on the part of the State Employment Commission is clear (*Bodinson Mfg. Co. v. California Employment Commission,* 17 Cal. 2d 321). There is no allegation that the treatment given plaintiff's members, or the law as applied to them, was any different than that accorded or applied to other persons under the same set of facts.

Again, the Court of Appeals has clearly and correctly answered petitioner's contention on this cause of action by its opinion in the current *Schatte* case. As we point out in our Brief in that case the decision is supported by cases from many other circuits. As far as Section 43 of the Civil Rights statutes is concerned (8 U. S. C., Sec. 43), it must be remembered that this is an action against the Employer Defendants and not against any state officials. These defendants did not act under "color of any statute, ordinance, regulation, custom or usage of any state or territory" as the section requires. *Screws v. United States* (1945), 325 U. S. 91, declared by petitioner to be in conflict with the decision here, is obviously not in point as regards the defendants against whom petitioner seeks judgment. That case involved a state officer, not private persons as are these defendants.

As far as Section 47(3), (8 U. S. C. 47(3) is concerned, it appears from the allegations of the complaint that what the petitioner is complaining of is alleged errors of law in the conduct of the hearings by the Employment Commission through alleged failure to permit inspection, exclusion of evidence, and erroneous legal conclusions. The only allegation of any act committed by

the Employer Defendants was the statement to the Commission that the employees left their work by reason of a trade dispute and the furnishing to the Commission of a list of the persons who had so left such employment, in accordance with the usual procedure. The California Act denies benefits to those who leave their work because of a trade dispute. (3 Deering's Cal. Gen. Laws, Sec. 56(a), p. 3358; see Petition in current *Schatte* case, Appendix A, p. 8.) Such allegations state no claim against these defendants under Section 47(3).

Furthermore, the failure of the claimants to follow up their legal remedies in the State court, which were ample and adequate to review any errors on the part of the Commission (*Bodinson Mfg. Co. v. California Employment Commission* (1941), 17 Cal. 2d 321), is a complete defense to any claim under Section 47(3). (*Trudeau v. Barnes* (5th Cir., 1933), 65 F. 2d 563; *Allen v. Corsano* (D. C. Del., 1944), 56 Fed. Supp. 169.) We also again call the Court's attention to the fact that the right to employment benefits arises out of the state law and that no claimant has any right to such benefits created in him by the Federal Social Security Act which is no more than an appropriation act. (See Brief in current *Schatte* case.)

Again there are other completely conclusive reasons, which the Court of Appeals considered unnecessary to note, why this complaint does not state a cause of action under the Civil Rights statute. It should again be noted that petitioner here purports to sue *on behalf of its members*. We know of no law, Federal or otherwise, which grants to a labor union the right to act as a sort

of trustee to enforce the personal injuries, though deprivation of civil rights, received by its members. The right to sue under both Sections 43 and 47(3) is specifically limited to "the party injured." Petitioner does not claim to be such party.

Petitioner here, not being a natural person, probably would not come within the protection of civil rights statutes (*Hague v. Committee for Industrial Organization* (1939), 307 U. S. 496, 514; *Oney v. Oklahoma City* (10th Cir., 1941), 120 F. 2d 861; *Finnish Workers Federation v. Horrocks,* 42 Fed. Supp. 411 (D. C. Wash., 1941)), but even if it were granted some protection under those statutes there is no allegation that any "civil right" which it possesses was in any way infringed by anybody. *Petitioner* is not alleged to have presented any claim before the Commission, requested or been denied any hearing, presented any evidence or been in any way connected with the matters alleged in this cause of action. It has not alleged any injury to it by virtue of the matters stated in the complaint. Since no civil right of petitioner has been injured, even assuming that it might have some such right, which the cases deny, the Federal courts are without jurisdiction of any action brought by it.

At pages 13 and 14 of its petition, petitioner alleges that the interpretation of the law given by the California Employment Commission conflicted with certain decisions of the state courts construing the Unemployment Insurance Act. Certainly it is hard to believe that petitioner expects a *Federal* court, and especially the Supreme Court of the

United States, to determine whether or not the Employment Commission erred in its interpretation of purely local law, especially where petitioner did not itself seek a review in the state courts! Therefore there is no reason for us here to establish (as we are sure we could), that the California Employment Commission correctly applied state law.

We submit that it is clear, for the reasons stated in the Court of Appeal's opinion, in this Brief, and in our Brief in the current *Schatte* case, that the Petition for Certiorari should be denied. It presents no new or important questions, and it was correctly decided below, both for the reasons there stated and for the additional reasons set forth herein.

Respectfully submitted,

O'MELVENY & MYERS,
HOMER I. MITCHELL,
W. B. CARMAN,
Counsel for Employer Respondents.

Office - Supreme Court
FILED
OCT 24 1950
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

October Term, 1950.

No. 223.

STUDIO CARPENTERS LOCAL UNION No. 946, an Unincorporated Labor Organization, as Representative of Its Members, *Petitioner*,

v.

LOEW'S, INCORPORATED, PARAMOUNT PICTURES, INC., WARNER BROTHERS PICTURES, INC., COLUMBIA PICTURES CORPORATION, SAMUEL GOLDWYN PRODUCTIONS, INC., REPUBLIC PRODUCTIONS, INC., HAL E. ROACH STUDIO, INC., TWENTIETH CENTURY FOX FILM CORPORATION, R. K. O. RADIO PICTURES, INC., UNIVERSAL PICTURES COMPANY, INC., ASSOCIATION OF MOTION PICTURE PRODUCERS, INC., THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, RICHARD F. WALSH and ROY M. BREWER, *Respondents*.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

ZACH LAMAR COBB,
929 Citizens National Bank Building,
Los Angeles 13, California
Counsel for Petitioners.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

Petitioner prays that this Court grant rehearing of its order of October 9, 1950, denying the petition for a writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit in the above entitled case as prayed for in the petition filed July 27, 1950, herein.

Reasons for Granting Rehearing and Issuing the Writ.

I.

On this October 23, 1950, this Court has denied the petition for mandamus and injunction in *Andrew MacKay, et*

al. v. *National Labor Relations Board, et al.,* No. 168 Misc. The petitioners therein are members of petitioner herein, and of the class for whom suit was brought herein. The contents of said petition for mandamus, and its Appendices "A", "B", and "C", are here respectfully adopted by reference.

II.

On September 27, 1950, while said petition for mandamus was pending, and in disregard thereof, the National Labor Relations Board certified the International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada, AFL, respondent herein, and called IATSE in the petition, as bargaining agent for petitioner, in the matters of:

1. Members of Association of Motion Picture Producers, Inc.;

2. Members of Independent Motion Picture Producers Association;

3. Ressan, Inc., d/b/a General Service Studios;

4. Hal Roach Productions;

5. Motion Picture Center Studios; and

6. Pine Thomas Productions.

The employees covered by said certification are identical with the class for whom this suit was brought, to wit: the individual carpenters belonging to petitioner, Carpenter's Local No. 946, of the United Brotherhood of Carpenters & Joiners of America, AFL (Pet. No. 168 Misc., p. 4; R. herein p. 5).

A copy of the certification in the matter of the Members of Association of Motion Picture Producers, Inc., respondents herein, is hereto attached. The said other certifications are under the same case number, 21-R-4088, and in the same form.

III.

Said Labor Board has thereby:

1. Chosen the aggressor IATSE, respondent herein, as the bargaining agent for the locked out carpenter employees of the respondent Major Motion Picture Companies. This has been done without the consent of the carpenter employees, over their protest, and by means of denying them their constitutional and statutory right of a hearing in opposition to the IATSE application. (Pet. No. 168 Misc., pp. 6-9).

2. Nullified the masterful statement of constitutional law given by the late Mr. Justice Cardozo in *Ohio Bell Telephone Company* v. *Public Utilities of Ohio,* 301 U. S. 292 (Petition pp. 17, 18; and its App. p. 34), as applied to federal agencies by the late Mr. Chief Justice Hughes in *Morgan* v. *United States,* (Pet. pp. 17, 18; and its App. p. 32).

3. Nullified Section 7 of the National Labor Relations Act, as reenacted in the Labor Management Relations Act, 29 U. S. C. A. 157, in depriving employees of their right thereunder "to bargain collectively through representatives of their own choosing".

4. Drawn the curtain on collective bargaining and opened the door to collectivism.

IV.

Only this Court can protect the Constitution and laws of the United States from nullification by lawless aggressors and ultra vires official sanction.

V.

Only this Court can give these petitioners their day in Court for redress under the Constitution and laws of the United States.

VI.

Under Rule 33, of the rules of this Court, it is not the privilege of petitioners to renew argument on the grounds stated in the petition for granting a writ of certiorari. The petition is referred to for the direct conflicts in decisions there set forth. It is respectfully stated that the grounds given in the petition are adequate.

VII.

It is further respectfully submitted that unless a writ is granted as prayed, the federal labor law will be left in a state of confusion against the public interest.

Respectfully submitted,

ZACH LAMAR COBB,
Counsel for Petitioners.

Dated October 23, 1950.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 33 of the rules of this Court.

ZACH LAMAR COBB,
Counsel for Petitioners.

APPENDIX "D"

Form NLRB-765a

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Case No. 21-R-4088

In the Matter of

MEMBERS OF ASSOCIATION OF MOTION PICTURE PRODUCERS, INC., and

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOTION PICTURE MACHINE OPERATORS OF UNITED STATES AND CANADA, AFL.

Certification of Representatives.

An election having been conducted in the above matter by the undersigned Regional Director of the National Labor Relations Board pursuant to the Board's direction, and in accordance with the Rules and Regulations of the Board, and it appearing from the Revised Tally of Ballots that a collective bargaining representative has been selected, and no objections having been filed by any of the parties within the time provided therefor.

Pursuant to the authority vested in the undersigned by the National Labor Relations Board,

IT IS HEREBY CERTIFIED THAT

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOTION PICTURE MACHINE OPERATORS OF UNITED STATES AND CANADA, AFL

has been designated and selected by a majority of the employees of the above-named Employer, in the unit heretofore found by the Board to be appropriate, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9(a) of the Act as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bar-

gaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Los Angeles, California, this 27th day of Sept., 1950.

On behalf of

NATIONAL LABOR RELATIONS BOARD
HOWARD F. LEBARON,
Regional Director for 21st Region
National Labor Relations Board